

**OPINION
49-83**

December 13, 1949 (OPINION)

GAME AND FISH

RE: Trapping of Bank Rats

Section 20-0706 N.D.R.C. 1943 provides for the method of taking muskrats. This section provides for the taking of muskrats when they are "injurious to any property." This matter is left to the discretion of the Commissioner. This section provides the methods of trapping muskrats and provides that the animals may be trapped "in their houses when the houses are opened by means of removing a wedged-shaped portion from the side of each house not to exceed one square foot in size by either a saw or hay knife for the purpose of inserting or taking out traps. The portion of the house which is removed must be replaced and sealed into place except during the time when the trap is being inserted or taken out."

The statute thus expressly allows this method of trapping muskrats in their so called houses, which are built in open water. It does not authorize this method of taking so called "bank rats." The statute provides carefully for the protection of the house after the trap is inserted or taken out. If the Legislature had deemed it best to provide a like method of taking bank rats, it would have so provided. In the absence of such provision, it is our opinion that the dens of bank rats may not be opened, especially, if this method of taking them would endanger the lives of the entire den of rats.